

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WENDELL COLEMAN,
Plaintiff,

v.

CHRISTINA PEARSON, et al.,
Defendants.

Case No. [20-cv-04762-JSW](#)

**ORDER REGARDING
CORRESPONDENCE AND SECOND
ORDER TO SHOW CAUSE
REGARDING SERVICE AND
INSTRUCTIONS TO CLERK**

Dkt. No. 7

On July 14, 2020, Plaintiff filed the Complaint in this case and paid the filing fee. Although Plaintiff filed his case *pro se*, he was expected to follow the same rules of procedure that govern other litigants. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987), *overruled on other grounds Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012); *see also Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (“Although we construe pleadings liberally in their favor, *pro se* litigants are bound by the rules of procedure.”).

The case was scheduled for an initial case management conference on October 16, 2020 at 11:00 a.m. However, when Plaintiff filed the Complaint, he did not submit a proposed summons. *See Fed. R. Civ. P. 4(b)* (“On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons--or a copy of a summons that is addressed to multiple defendants--must be issued for each defendant to be served.”). In addition, “[a] summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.” *Fed. R. Civ. P. 4(c)(1)*. Alternatively, a plaintiff may request that a defendant waive service by following the requirements

1 set forth in Federal Rule of Civil Procedure 4(d).

2 Rule 4(m) provides that if a defendant is not served within “90 days after the complaint is
3 filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action
4 without prejudice against that defendant or order that service be made within a specified time.”
5 Under Rule 4(m), the deadline to effect service was October 13, 2020.¹

6 On September 24, 2020, the Court vacated the case management conference and issued an
7 order directed Plaintiff to show cause why the case should not be dismissed for failure to obtain
8 and serve a summons. The Court also directed Plaintiff to show cause why the Court should grant
9 an extension of his time to serve the Defendants. Plaintiff’s response was due by October 16,
10 2020, and the Court advised Plaintiff that if he failed to respond, the Court would dismiss the case
11 without prejudice for failure to prosecute. Fed. R. Civ. P. 41(b). The Court did not receive a
12 response from Plaintiff, and it dismissed the case without prejudice on October 27, 2020.²

13 On June 17, 2021, Plaintiff filed a letter requesting an update and requesting that the Court
14 re-open the matter. (Dkt. No. 7.) In that letter, Plaintiff states he was arrested on October 7, 2020,
15 “which lead [*sic*] to a two week quarantine and failed ability to communicate with the Court[.]”
16 Although that provides some explanation for why Plaintiff did not respond to the Order to Show
17 Cause, it does not respond to the information required in the Order to Show Cause.

18 Before the Court considers Plaintiff’s request to re-open this matter, it will provide him
19 with an opportunity to respond to the Order to Show Cause. Accordingly, by no later than
20 September 15, 2020, Plaintiff shall provide a response to that Order to Show Cause and explain
21 why he failed to obtain a summons upon filing the Complaint, why he had not served the
22 Defendants as of September 24, 2020, and why he should be granted an extension of the time
23 limits set forth in Rule 4(m) to effect service.

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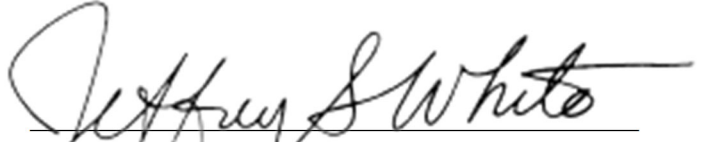
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26 ¹ Ninety days from July 14, 2020 was October 12, 2020, a federal holiday. *See* Fed. R. Civ.
27 P. 6(a)(1)(C).

28 ² The Court notes that neither copy of the Order to Show Cause nor the copy of the Order of
Dismissal that were served on Plaintiff were returned.

1 It is FURTHER ORDERED that the Clerk shall serve Plaintiff with a copy of the original
2 Order to Show Cause and the Order of Dismissal (Dkt. Nos. 5 and 6).

3 **IT IS SO ORDERED.**

4 Dated: August 18, 2021


JEFFREY S. WHITE
United States District Judge

United States District Court
Northern District of California